IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13496 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ISHWARBHAI HIRABHAI PATEL

Versus

STATE OF GUJARAT

Appearance:
MR PK JANI for Petitioner
MS BR GAJJAR, ld,.AGP for Respondent-State
MR HS MUNSHAW for Respondent No. 2

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 06/11/2001

ORAL JUDGEMENT

Rule. Ms.B.R.Gajjar, ld.AGP waives the service of Rule on behalf of respondent-State and Mr.H.S.Munshaw waives the service of Rule on behalf of respondent no.2.

2. The petitioner in this petition has challenged the order dated 6.7.2000 at Annexure.D passed by the District Development Officer, Mehsana and the order dated 12.10.2000 at Annexure.E confirming the order in revision passed by the Additional Development Commissioner, Gujarat State, Gandhinagar, removing the petitioner as Sarpanch of Sipor Gram Panchayat, under Sec.57(1) of the Gujarat Panchayats Act, 1963.

3. A show cause notice dated 9.12.1999 was served upon the petitioner in respect of certain irregularities alleged to have been committed by the petitioner during the course of discharging his duties as Sarpanch of Sipor Gram Panchayat. The petitioner by his reply dated 1.1.2000 explained the allegations made in the said show cause notice and also produced the resolution passed by the Gram Panchayat in support of his case. However, the respondents passed the impugned order. Hence this petition.

4. Heard learned Counsel appearing for the respective parties and perused the papers. Learned Counsel for the petitioner submitted that the petitioner got all the works executed on behalf of the Panchayat and that too, after obtaining the requisite approval from the competent authorities and therefore, it cannot be said that the petitioner has committed any irregularity while getting the said works executed. Learned Counsel invited my attention to the Resolution No.65 at Annexure.C approving all the works executed by the petitioner on behalf of the Panchayat. Learned Counsel for the petitioner, without prejudice to the contentions, submitted that the punishment of removal of the petitioner as Sarpanch is too harsh having regard to the minor irregularities alleged to have been committed by the petitioner. He has relied upon a decision of this Court in the case of K.R.Patel v. Additional Development Commissioner, reported in 2001 (1) G.L.H. 109. On the other hand, learned Counsel appearing for the respondents nos.1 and 2 justified the impugned orders.

5. Perusing the allegations made against the petitioner in the show cause notice dated 9.12.1999, it appears that Shri Dashrathlal K.Upadhyaya made certain allegations against the petitioner and therefore, the said show cause notice was issued on the basis of the inquiry made against the petitioner. The allegations in the said show cause notice are to the effect that the petitioner misused his power as Sarpanch by extending the C.C. road upto Rabarivas of the village. It was also

alleged that without inviting quotation from the manufacturers/suppliers, the petitioner purchased materials for the purpose of development under Gokul Gram Yojna and has thus committed irregularity while performing his duty as Sarpanch and the petitioner has not taken into consideration the application dated 18.3.1999 of Shri Dashrathlal K.Upadhyaya and has thus committed irregularity. The petitioner carried out the other work under unanimous resolution dated 7.8.1999 and therefore, it is found that the petitioner by purchasing excess 38 cement bags for the purpose of carrying out the work under Gokul Gram Yojna and by keeping the same in a private house and has therefore, committed irregularity. Finally, it was alleged that the petitioner by paying more amount for the work of sprinkling water and has thus committed irregularity.

In reply to the show cause notice, the petitioner in terms pointed out that the work of constructing C.C. road at the entrance of Rabarivas was approved prior to the constitution of the Executive Committee and plans, estimates were approved by the competent authority and the technical and administrative approvals were also obtained from the competent authority in that behalf. It was further pointed out that the agreement in respect of the same was executed by the office of the Taluka Development Officer, Kheralu and the work was got executed as per the said agreement and that the petitioner has not committed any act of misusing the power in his capacity as Sarpanch. Similarly, with respect to the irregularity at item No.2, the petitioner pointed out that the works which were approved under the Gokul Gram Yojna were got executed through the Panchayat and got approved by the Executive Committee in its meeting held on 7.8.1999, that the said works were got executed after inviting tenders and after resolution was passed by the Executive Committee on 3.3.1999; that the works were got executed after obtaining competitive rates and therefore, no financial rules have been violated in any manner. With respect to the irregularity at item No.3, the petitioner pointed out that the application dated 18.3.1999 given by Shri Dashrathlal K.Upadhyaya was for not making the payment, that since he is a member in the opposition group in the Gram Panchayat, he has developed a habit of opposing each and every matter and therefore, the application was brought to the notice of the members and the payment was got approved by the Executive Committee on 7.8.1999 and therefore, it cannot be said that the petitioner had acted in a high-handed manner. With regard to irregularity at item No.4, it is pointed out that all the works were got executed after

obtaining the approval of the Committee and after passing approval resolutions in that behalf. With respect to irregularity at item No.5 of the show cause notice, the petitioner pointed out that the Gram Panchayat purchased 150 bags of cement as per the estimate given by the contractor and after executing the works in question, 38 bags of cement were left out and the same were used in other works of the Panchayat and therefore, it cannot be said that any irregularity is committed by the petitioner in that behalf. Finally, with regard to the alleged irregularity at item No.6, the petitioner pointed out that a labourer was engaged for sprinkling water on the road so as to see that the road acquired more strength and the amount of remuneration paid to him was recovered from the contractor and therefore, no irregularity can be attributed to the petitioner in that behalf.

6. After having minutely gone through the reasoning of the authorities in the impugned order, I do not find any detailed discussion regarding the explanation tendered by the petitioner. On the contrary, the authorities have accepted the report submitted by the Assistant Engineer, Jawahar Employment Scheme. Thus, in my opinion, the authorities have, totally ignored the resolutions passed by the Gram Panchayat approving the petitioner's work on behalf of the Panchayat. Not only that, the petitioner in fact obtained the necessary approvals of the competent authorities before carrying out the works in the interest of the inhabitants of the Panchayat. Thus, the works executed by the petitioner having been executed on behalf of the concerned Panchayat and that too after obtaining the requisite prior approval from the authorities and that the Panchayat itself has passed resolution approving the action taken by the petitioner on behalf of the Panchayat, it cannot be said that the petitioner has committed irregularities as stated in the show cause notice. Therefore, the case of the petitioner, in my opinion, has substance and the impugned show cause notice and the orders are issued in total non-application of mind to the relevant facts of the present case. The allegations made against the petitioner show that the objection is that the procedure has not been followed while executing the development projects and for that purpose, the petitioner cannot be held to be responsible for accounting procedure and the said stand fully explained by the reply as have been given. This Court, in the case of K.R.Patel (supra), in an almost identical case was of the view that the allegations made against the petitioner are in relation to accounting procedure and therefore, Sec.57(1) of the Act cannot be invoked against the petitioner. This Court

also gave meaning to the words, 'Inquiry as it deems necessary' and observed that it cannot mean a zero inquiry and mere reference to reply does not mean real consideration of reply. It would mean real application of mind to the allegations, replies and material placed before the authority. In my opinion, the said decision of this Court is squarely applicable in the facts of the present case.

7. In the result, this petition is allowed. The impugned order dated 6.7.2000 at Annexure.D passed by the District Development Officer, Mehsana and the order dated 12.10.2000 at Annexure.E passed by the Additional Development Commissioner, Gujarat State, Gandhinagar, respectively are quashed and set aside. Consequently the respondents are directed to restore the petitioner to his original post as Sarpanch within 15 (fifteen) days from the date of receipt of the writ of this order. Rule is made absolute accordingly with no order as to costs.

Direct service is permitted.

(K.R. Vyas, J.)

Sreeram.